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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Interconnection and Resale Obligations Pertaining
to Commercial Mobile Radio Services

CC Docket No. 94-54

**FURTHER COMMENTS OF
SPRINT SPECTRUM L.P. d/b/a SPRINT PCS**

Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS") submits the following comments in response to the Federal Communications Commission ("FCC" or "Commission") request for further comment addressing the advisability of mandatory automatic roaming regulations for the commercial mobile radio service ("CMRS") industry.¹

I. INTRODUCTION

Based upon its experience in the market since it last commented in this proceeding,² Sprint PCS retains its position that imposition of mandatory automatic roaming regulations is unnecessary. Additional regulation in this area would be inconsistent with both the Commission's general policy of allowing market forces, rather than regulation, to shape the

¹ See FCC Public Notice, *Commission Seeks Additional Comment On Automatic Roaming Proposals For Cellular, Broadband PCS, and Covered SMR Networks*, CC Docket No. 94-54, DA No. 97-2558 (Dec. 5, 1997).

² See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462 (1996) ("Second R&O," and the "NPRM"); Sprint PCS Comments (Oct. 4, 1996).

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wireless industry,³ as well as Congress' goal of creating a "pro-competitive, de-regulatory national policy framework" for the telecommunications industry.⁴ Sprint PCS has encountered difficulties in roaming negotiations with a handful of cellular carriers. These carriers insist upon roaming restrictions based solely on a roaming PCS customer's home market origin. The Commission should clarify that it is unjust and unreasonably discriminatory for a cellular carrier to impose service restrictions based upon the home market origin of a roaming PCS customer.

II. IMPOSITION OF A MANDATORY AUTOMATIC ROAMING REQUIREMENT IS UNNECESSARY

In the initial comment and reply round in this NPRM, most commenters, including Sprint PCS, opposed the adoption of automatic roaming requirements, stating that such regulation was premature and inconsistent with the market oriented approach of the Telecommunications Act of 1996.⁵ These commenters predicted that automatic roaming likely would develop for all CMRS services, as it did for cellular service, without the imposition of mandatory roaming regulations.

Based upon Sprint PCS' experience to date, CMRS carriers generally have found that it is in their best business interests to enter into automatic roaming agreements. To date Sprint PCS has concluded reciprocal automatic roaming agreements with several dozen CMRS carriers across the country, providing automatic roaming coverage for over seventy-

³ See, e.g., *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, 11 FCC Rcd 8965 (1996) (permitting fixed wireless service offerings by commercial mobile radio service licensees); *Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers*, 11 FCC Rcd 6610 (1996) (permitting interactive video and data service licensees to offer mobile as well as fixed services).

⁴ See Sen. Conf. Rep. No. 104-230, at 113 (1996) ("Sen. Conf. Rep.").

⁵ See e.g., Sprint PCS Comments at 2 (Oct. 4, 1996); BellSouth Comments at 2-4 (Oct. 4, 1996); AirTouch Comments at 2 (Oct. 4, 1996); CTIA Comments at 4-8; GTE Comments at 2-6 (Oct. 4, 1996); AT&T Comments at 3-7 (Oct. 4, 1996); 360° Communications Comments 2-4 (Oct. 4, 1996).

five percent of the United States.⁶ Sprint PCS expects to conclude additional roaming agreements in 1998 that will further extend its coverage of the United States.

Because automatic roaming, for the most part, appears to be developing in the normal course of business, the Commission should intervene in automatic roaming matters only in specific cases of discrimination or anti-competitive conduct. Such a targeted and informed regulatory approach is consistent with the “pro-competitive, de-regulatory national policy framework” for the telecommunications industry established by Congress and implemented by the Commission.⁷

III. SPRINT PCS HAS ENCOUNTERED ANTI-COMPETITIVE AND UNLAWFULLY DISCRIMINATORY AUTOMATIC ROAMING PRACTICES BY A HANDFUL OF CELLULAR CARRIERS

Although the Commission need not impose mandatory automatic roaming requirements on the CMRS industry, it should fine-tune its policies to ensure fair and equitable practices by all industry participants. The Commission stated in its 1995 NPRM in this same proceeding,⁸ that it would be prepared to intercede

should the parties be unable to reach reasonable private agreements and [would] closely scrutinize any exercise of market power or engagement in other forms of anti-competitive conduct designed to raise rivals’ costs and thwart competition, or to charge unjust or unreasonable prices for roaming service.⁹

⁶ Cellular carriers that have been willing to enter into reciprocal automatic roaming agreements with Sprint PCS include AT&T Wireless, GTE, Ameritech, Southwestern Bell, Frontier Cellular, U.S. Cellular, AllTel, Western Wireless, Vanguard, 360° Communications, Atlantic Cellular, Pri Cellular.

⁷ See Sen. Conf. Rep. at 113.

⁸ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 10 FCC Rcd 10666 (1995) (“1995 NPRM”).

⁹ *Id.* at 10694.

Sprint PCS supports Commission intervention under such limited circumstances,¹⁰ and submits that clarification of its roaming policies adequately can correct specific unjust and discriminatory conduct that has arisen with respect to automatic roaming.

Sprint PCS has encountered anti-competitive conduct with respect to automatic roaming during attempted roaming negotiations with a handful of incumbent cellular providers. Sprint PCS has encountered obstacles similar to those described by AT&T Wireless Services in an ex parte letter submitted to the FCC on May 13, 1997. In its letter, AT&T noted that it had “underestimated . . . the degree to which certain incumbent cellular carriers are willing to sacrifice roaming revenue in order to impede the entrance of a new PCS competitor in their markets.”¹¹ The anti-competitive effect of such behavior is exacerbated when both the A and B-side cellular carriers in a specific market refuse to enter into PCS roaming arrangements. In such instances, PCS service providers are virtually excluded from offering roaming capabilities in the areas served by those cellular carriers.

Some incumbent cellular providers have refused to negotiate automatic roaming agreements with any PCS licensees, despite their willingness to enter into automatic roaming arrangements with other cellular carriers.¹² Other cellular carriers have refused to enter into what are generally referred to as “home-on-home” or “in-market” roaming agreements.¹³ Home-on-home roaming refers to roaming agreements between carriers whose markets overlap. Although AT&T believes that a mandatory roaming requirement is

¹⁰ See *Sprint PCS Comments* at 4.

¹¹ Ex Parte Letter from Cathleen A. Massey, Vice President, External Affairs, AT&T Wireless Services, Inc. to David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, CC Docket No. 94-54, (filed May 13, 1997) (“AT&T Ex Parte”).

¹² Cellular carriers that have refused to enter any roaming agreements with Sprint PCS include BellSouth, SNET Mobility and Radiofone.

¹³ Cellular carriers that have refused to enter home-on-home agreements include AirTouch, Bell Atlantic Mobile and LA Cellular.

necessary to resolve this problem, Sprint PCS has concluded that the Commission can remedy the problem simply by clarifying that such behavior violates Sections 201(b) and 202(a) of the Communications Act of 1934, as amended (the "Act").

IV. THE COMMISSION SHOULD CLARIFY THAT HOME-ON-HOME RESTRICTIONS ARE UNJUST AND UNREASONABLY DISCRIMINATORY

The Commission specifically should clarify that service restrictions based upon the home market of the customer, *i.e.* home-on-home restrictions, are unjust and unreasonably discriminatory.¹⁴ The Commission has interpreted Section 202(a) of the Act to prohibit discrimination among requesting carriers with respect to the provision of services or the terms of such services based upon factors other than the nature or technical requirements of providing the services.¹⁵ Specifically, the Commission has held that a common carrier may not restrict provision of a common carrier service¹⁶ to another carrier based merely upon that carrier's identity and/or the fact that the carrier is a competitor.¹⁷

The refusal of some incumbent cellular carriers to negotiate home-on-home roaming agreements with PCS carriers exemplifies the kind of unreasonable discrimination that

¹⁴ Contrary to the assertions of AirTouch Communications, *see* Ex Parte Letter from Kathleen Q. Abernathy, Vice President, Federal Regulatory, AirTouch Communications to William F. Caton, Acting Secretary, Federal Communications Commission at Attachment at 2, (filed June 20, 1996), the Commission has not limited the concept of automatic roaming to out of market roaming. The Commission defines roaming as a "telecommunications service occurring when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the subscriber has no pre-existing services or financial relationship." This definition does not distinguish between roaming in an out of market region and home-on-home roaming.

¹⁵ *See e.g., Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 280-85 (1976), *amended on recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom., AT&T v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978) ("Resale and Shared Use Decision").

¹⁶ The Commission has stated that roaming is a common carrier service subject to the restrictions of Section 202(a) of the Act. *See Second R&O*, 11 FCC Rcd at 9468-9.

¹⁷ *Resale and Shared Use Decision* at 281-83.

Section 202(a) is designed to prevent. The cellular carriers involved offer no reasonable technical basis for their refusal to enter into home-on-home arrangements with PCS providers.

In-market and out of market roaming services are not different, nor are there any technical or other reasonable basis for discriminating between home-on-home and out of market roaming.¹⁸ Certain cellular carriers deny like services to PCS providers based entirely upon their identities as in-market competitors.¹⁹ By denying home-on-home roaming, the cellular providers seek to forestall competition in their markets. As noted above, the Commission long has held that a carrier's status as a competitor does not justify discrimination in services or charges between that carrier and a non-competing carrier.²⁰

The in-market roaming services sought by Sprint PCS are virtually identical to those roaming services provided to other CMRS providers who are not licensed to provide services in the cellular incumbent's market. By restricting service based upon the home market of the customer, a few cellular carriers can delay and limit competition from new entrants in the CMRS market. Some cellular carriers maintain that they also impose such restrictions on other cellular carriers and that they, therefore, treat all carriers equally. This

¹⁸ Sprint PCS's successfully negotiated roaming agreements described above contain no geographic restrictions.

¹⁹ Some of the carriers refusing to offer home-on-home roaming take the view that in-market competitors, like Sprint PCS, can simply resell the cellular carrier's services for those regions where the PCS and cellular license areas overlap. This approach is unworkable both from a technical and a competitive standpoint. A PCS provider would be forced to issue separate phone numbers for its subscribers for use in those regions where the PCS carrier is a reseller and customers would have to switch between the numbers as they moved from one region to the other. Aside from the technical difficulty of such a requirement, it would also discourage consumers from purchasing the PCS carriers services if those consumers deemed such roaming as important. *See e.g.*, BellSouth Reply Comments at 15 (July 14, 1995); AT&T Ex Parte at 3.

²⁰ *Resale and Shared Use Decision* at 281-83. It is important to note that the non-discrimination requirement applies to charges as well as the actual provision of services. Thus, a cellular carrier could not cure its violation of Section 202 by offering home-on-home roaming at rates that themselves would be unreasonable or discriminatory.

argument ignores, of course, the different service area designations for PCS and cellular and the decade long head start of the cellular industry. Cellular carriers on both the A and B side have for all practical purposes built out their networks and have freely entered into roaming agreements that offer most cellular carriers virtually nationwide coverage. Home-on-home roaming is not necessary for cellular carriers. Home-on-home roaming capabilities, however, can be essential to new PCS entrants as they build out their systems. Home-on-home restrictions impede the Commission's goal of a highly competitive CMRS marketplace. The Commission should declare that such restrictions are unreasonable, unjust, and unlawfully discriminatory.

V. CONCLUSION

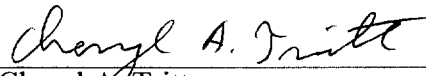
The Commission should apply its general policy to avoid imposing unnecessary regulatory burdens upon the CMRS industry unless required to remedy identifiable threats to the competitive fairness of the market or to protect consumers from unreasonable carrier practices. Sprint PCS requests, therefore, that the Commission clarify that the imposition of service restrictions based upon the home market of a roaming PCS customer is unreasonable, unlawfully discriminatory and anti-competitive.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathryn M. Stasko, do hereby certify that the foregoing **FURTHER COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS** was hand delivered on this 5th day of January to the following:

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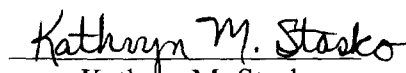
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